

**IN THE COURT OF APPEAL, FIJI**  
**[On Appeal from the High Court]**

**CRIMINAL APPEAL NO. AAU 39 of 2023**  
**[In the High Court at Suva Case No. HAC 181 of 2021]**

**BETWEEN** : **THE STATE**

**AND** : **ULAIASI QALOMAI**

***Appellant***

***Respondent***

**Coram** : **Prematilaka, RJA**

**Counsel** : **Mr. S. Shameem for Appellant**  
: **Respondent absent and unrepresented**

**Date of Hearing** : **28 August 2024**

**Date of Ruling** : **01 October 2024**

**(In Chambers)**

**RULING**

- [1] The respondent had been indicted in the High Court at Suva with three counts of digital rape, one count of rape using his tongue, two counts of penile rape and three counts of sexual assault contrary to the Crimes Act, 2009.
- [2] The learned trial judge acquitted the respondent of all charges. The State lodged a timely appeal against the acquittal on the basis that the learned trial judge should have invoked section 162(1) of the Criminal Procedure Act and recorded a conviction for Defilement of a Young Person between the ages 13 and 16 years of age for counts 3 and 6 in the amended information.
- [3] The matter came-up on seven occasions in court since 16 January 2024. However, the respondent was neither present nor represented on any of those days. The State has

not been able to serve notice of its appeal on the respondent despite making numerous attempts for more than 07 months as the respondent's whereabouts are unknown and he could not be located.

[4] Finally, the Acting Director of Public Prosecutions had sanctioned the withdrawal of its appeal and a Form 3 under Rule 39 of the Court of Appeal was lodged on 28 August 2024.

[5] As the appellant is the State the court did not make inquiries from the state counsel in keeping with *Masirewa* guidelines (*Masirewa v State* [2010] FJSC 5; CAV 14 of 2008 (17 August 2010) as is usually done with other appellants.

[6] Having been satisfied that the decision to withdraw the appeal had been made deliberately, intentionally and without mistake, this court is inclined to allow the abandonment of the appeal.

**Order of the Court:**

1. The application to abandon the appeal against acquittal is allowed.



  
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**Hon. Mr Justice C. Prematilaka**  
**RESIDENT JUSTICE OF APPEAL**

**Solicitors:**

Office of the Director of Public Prosecution for the Appellant  
Respondent absent and unrepresented